

## **REMARKS**

Pursuant to 37 C.F.R. § 1.111, Applicants respectfully request reconsideration of the claim rejections set forth in the Office communication dated January 11, 2008.

### **Summary**

Claims 115-209 are newly added.

### **Summary of Substance of Interview**

Applicants thank the Examiner for the telephonic interview on 25 March 2008 and follow-up email dated 4 April 2008. During the telephonic interview, the Examiner clarified 35 U.S.C. § 101 claim rejections. The Examiner indicated that each independent claim should include a useful, tangible, and concrete result. During the telephonic interview, the Examiner kindly agreed to review proposed claim language. In response to the proposed claim language, the Examiner stated that “the best way I can suggest is to positively claim playing back the audio data” (email dated April 4, 2008).

In regards to the 35 U.S.C. § 103 claim rejections, the Examiner agreed that the December 19, 2008 proposed claim set, which was sent to the Examiner on December 19, 2008, overcomes the claim rejections. Applicants are formally submitting the December 19, 2008 proposed claim set.

### **Claim Rejections – 35 U.S.C. § 101**

Claims 1 – 3, 36 – 38, 71 – 73, and 106 – 115 were rejected pursuant to 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Independent claims 1, 36, 71, and 106 recite playing back the audio data. As discussed above, in regards to including a tangible result, the Examiner stated that “the best way I can suggest is to positively claim playing back the audio data” (email dated April 4, 2008). As indicated by the Examiner, playing back audio data is clearly a tangible result because the playback is capable of being perceived by the sense of hearing. Therefore, claim

1 includes statutory subject matter because the playback produces a useful, concrete, and tangible result.

**Claims Rejections – 35 U.S.C. § 103**

Claims 1, 3, 36, 38, 73, 106, 107 and 109 – 115 were rejected pursuant to 35 U.S.C. § 103(a) as being unpatentable over Heyl (U.S. Patent No. 5,774,567) in view of Best (U.S. Patent No. 2,265,097). Claims 2, 37, and 72 were rejected pursuant to 35 U.S.C. § 103(a) as being unpatentable over Heyl in view of Best and in further view of Frederick (U.S. Patent No. 5,768,126).

Claim 1 recites each scale factor is based on an analysis of the entirety of each of said digital audio files relative to the other digital audio files in their entirety, the identified peak value, and the identified mean values for the digital audio files; and applying each said scale factor to the entirety of each of said digital audio files respectively; the scale factors operable to adjust the identified mean levels of the audio files to substantially equivalent levels and adjust the audio files to a recording medium maximum level to create scaled digital audio files. As discussed during the telephonic interview on March 25, 2008, the Examiner agreed that the cited art fails to disclose at least these features of claim 1. Therefore, claim 1 is allowable over the cited references.

Dependent claims 2, 3, and 109 – 114 depend from allowable claim 1, so are allowable for at least this reason. Further limitations of the dependent claims may be allowable over the cited references.

Claim 36 recites each scale factor is based on said digital audio files relative to each other, the identified peak value, and the identified average value for each of the digital audio files; a means for applying each said scale factor to each of said digital audio files respectively, the scale factors operable to adjust the identified average levels of the audio files to a substantially equivalent level and adjust the audio files to a recording medium maximum level to create scaled digital audio files. As discussed during the telephonic

interview on March 25, 2008, the Examiner agreed that the cited art fails to disclose at least these features of claim 1. Therefore, claim 1 is allowable over the cited references.

Dependent claims 37 and 38 depend from allowable claim 36, so are allowable for at least this reason. Further limitations of the dependent claims may be allowable over the cited references.

Claim 71 recites wherein each scale factor is based on an analysis of the entirety of each of said digital audio files relative to each other, the identified peak, and the identified mean values for each of the digital audio files;-applying each said scale factor to each of said digital audio files respectively, the scale factors operable to adjust the identified mean levels of the audio files to the same level and adjust the audio files to a recording medium maximum level to create scaled digital audio files. As discussed during the telephonic interview on March 25, 2008, the Examiner agreed that the cited art fails to disclose at least these features of claim 1. Therefore, claim 1 is allowable over the cited references.

Dependent claims 72 and 73 depend from allowable claim 71, so are allowable for at least this reason. Further limitations of the dependent claims may be allowable over the cited references.

Claim 106 recites generating first and second scale factors based on the audio file characteristic values including the average levels and peak absolute values for each of the digital audio files and a maximum value allowed by an output audio file format; generating a first scaled digital audio file by applying the first scale factor to the originally input first digital audio file, the first scale factor operable to adjust the identified average level and peak absolute value of the first digital audio file; generating a second scaled digital audio file, which has an output level that is substantially equivalent to an output level of the first scaled digital audio file, by applying the second scale factor to the originally input second digital audio file, the second scale factor operable to adjust the identified average level and peak absolute value of the second digital audio file. As discussed during the telephonic interview

on March 25, 2008, the Examiner agreed that the cited art fails to disclose at least these features of claim 1. Therefore, claim 1 is allowable over the cited references.

Dependent claims 107 and 108 depend from allowable claim 106, so are allowable for at least this reason. Further limitations of the dependent claims may be allowable over the cited references.

#### **New Claims**

Claims 115 – 209 depend from allowable independent claims, so are allowable for at least this reason. Further limitations of the newly added claims may be allowable over the cited references.

**Conclusion**

For at least the reasons presented above, the Applicants respectfully submit that the pending claims are in condition for allowance.

The Examiner is respectfully requested to contact the undersigned in the event that a telephone interview would expedite consideration of the application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jay Q. Knobloch", written over a horizontal line.

Jay Q. Knobloch  
Registration No. 57,347  
Agent for Applicants

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200